

Express Mail Label No. EV969121405US
U. S. Patent Application No. 10/664,581
Amendment dated December 5, 2006.

Remarks

The pending claims 1 and 24 have been amended to eliminate a typographic error.

The Examiner states that the drawings are objected to as failing to comply with 37 CFR 1.84 (p) (5) because they do not include the following reference sign(s) mentioned in the description: "212" on Page 13, Line 11 of Paragraph 52 of the Applicant's specification.

In response to this objection, corrected drawing sheets for Figure 2, in compliance with 37 CFR 1.121(d) are attached. The reference sign "212" is now drawn on Figure 2 in a manner consistent with its description within Paragraph 52 of the Applicant's specification. As corrected, reference sign 212 points to two lines that intersect and define a location and an orientation of a plane. The plane is an example of a location of the mating surface 212 that is located at a pre-determined height (H1) above the first surface 104.

The Examiner states that claims 40, 42-47 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

With respect to claim 40, the Examiner further states that the limitation "wherein each of said first and second imagers includes an illumination source..." as set forth in claim 40 was not found in specification and drawings.

Claim 40 depends from and includes the limitations of claim 36. Claim 36 was not rejected under 35 U.S.C §112, and hence, the Examiner indicates that claim 36 contains subject matter which was described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 36 recites in part, "said structure is configured to support, at any given time, one of said first imager and said second imager at a position above said encoded indicium..."

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(underline added). Claim 40 recites in part that "each of said first and second imagers includes an illumination source" (underline added).

Combining a portion of the language of claim 36 and a portion of claim 40 results in the language, "said structure is configured to support, at any given time, one of said first imager and said second imager that includes an illumination source at a position above said encoded indicium" (underline added). Within this combined claim language of claim 36 and claim 40, the underlined text of claim 40 is inserted into the text of claim 36.

With respect to the "that includes an illumination source" portion of the combined claim language, the Applicant's specification states "...the imager can comprise a source of illumination for illuminating a target encoded indicium 120," (underline added) (Paragraph 48, Lines 2-5) and states "The at least one illumination source 110 (or the alternative source of illumination provided by the imager) is controlled to provide a predetermined illumination level during the time that the imager is operating..." (Paragraph 49, Lines 4-7).

The above statement, "the imager can comprise...illumination", can apply to zero, one or more imagers and can apply, for example, to a first imager, a second imager, a third imager etc., or any combination thereof (underline added). Whether any one of the first imager, the second imager, the third imager etc., or any combination thereof is supported within a particular configuration of the structure at any one time, is a separate question and depends upon the particular configuration of the structure, at that any one time.

Accordingly, the statement "at least one illumination source" can include illumination provided by zero, one or more imagers, and can be provided for example, by a first imager, a second imager, a third imager etc. or any combination thereof. Whether any one of the first imager, a second imager, a third imager etc., or any combination thereof is supported within a particular configuration of the structure, at any one time, is a separate question and depends upon the particular configuration of the structure, at that any one time.

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The above statements within the invention description that support the language of claim 40 with respect to a source of illumination provided by the imager, in combination with portions of the invention description which support the subject matter of claim 36, when combined, also support the combined subject matter represented by the combined language of claim 36 and 40, and hence support claim 40 by itself.

With respect to claims 42-43, the Examiner further states that the language of claim 42 that recites "...an alternate first section of said hollow chamber, ... is configured so that said alternate first section can replace said first section" was not found in the specification. The Examiner further states that she had a hard time finding, for example "the alternate first section can replace the first section" or similar limitation with second section, and respectfully requests the Applicant to point out the specific page and line number(s) in the specification and/or drawings, wherein the limitation is supported.

Claim 42 depends from and includes the limitations of claim 41. Claim 41 was not rejected under 35 U.S.C §112, and hence, the Examiner indicates that claim 41 contains subject matter which was described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to the language of claim 42, the Applicant's invention description states "A plurality of second sections..., may be used with the same first section 210 to measure the quality of encoded indicia of type A," (underline added) (Paragraph 52, Lines 5-7) and further states "A different first section 210' can be provided having a defined aperture 104' that allows an encoded indicium of type B to be viewed," (underline added) (Paragraph 52, Lines 15-17).

The American Heritage Dictionary defines "alternative" as being "different." An alternate (alternative) first section of said hollow chamber is also a different first section. The

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first section 210 and first section 210' are alternative and different first sections, with respect to each other.

The Applicant's specification further states that "Accordingly, one can configure a suitable self-aligning optical verifier for verifying an encoded indicium selected from one of Type A and Type B with either of a first imager or a second imager merely by assembling the correct first and second sections as necessary," (underline added) (Paragraph 52, Lines 17-20).

As stated above, to measure the quality with respect to encoded indicia of Type A, the same first section Type A is assembled in combination with a second section to form one particular configuration of the structure, and to measure the quality with respect to encoded indicia of Type B, a different first section 210' is assembled with a second section, to form a another particular configuration of the structure.

In some configurations of the structure, the correct first section would be first section 210 and in other configurations of the structure, the correct first section would be first section 210'. In some configurations of the structure, the correct second section would be second section 220, and in other configurations of the structure, the correct second section would be second section 220'.

As shown in the embodiment of FIG. 2, either first section 210 or 210' is mated with one second section 220 or 220'. Because the first section 210 and the first section 210' cannot both be mated to a second section at any one time, the first section 210 is an alternative to the first section 210', and vice versa. Accordingly, to mate a second section with the first section 210', and if the second section is currently mated with the first section 210, then the first section 210 is replaced with the first section 210'. Likewise, to mate a second section with the first section 210, and if the second section is currently mated with the first section 210', then the first section 210' is replaced with the first section 210.

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Consequently, the language of claims 42-43 reciting "...an alternate first section of said hollow chamber... is configured so that said alternate first section can replace said first section," is supported by the statements of the Applicant's specification, as explained above.

Claims 1-9, 24-39, and 46-51 are rejected under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent No. 5,567,934 to Zheng et al. ("Zheng") in view of U. S. Patent No. 4,488,679 to Bockholt et al. ("Bockholt"). The Examiner does not allow claim 41 and does not specifically reject claim 41 under 35 U.S.C. §112 or under 35 U.S.C. §103(a). The Applicant will respond as if claim 41 was rejected under 35 U.S.C. §103(a).

Independent claims 1 and 24 recite in part "the imager can obtain at least one image of the encoded indicium from which image...quality of the encoded indicium can be measured..." Independent claims 29, 36 and 46 also recite "verifying the quality of an encoded indicium..." Independent claim 41 also recites "...measuring the quality of encoded indicium..."

The Examiner states that Bockholt discloses a "...structure... from which image... quality of the encoded indicium can be measured..." The Applicant re-asserts the arguments that were asserted by the Applicant in previous office action responses, and remind the Examiner that Bockholt describes a sensing means to determine whether there is satisfactory alignment with the code being read and that such a sensing means is a "go-no go" criterion that does not provide qualitative or quantitative information about the quality of the indicium being viewed so that the quality of the encoded indicium can be measured. Consequently, the Applicant asserts that all pending and rejected independent claims 1, 24, 29, 36, 41, 46, 48 distinguish from and are allowable over the prior art of record.

Independent claims 24 and 29 and dependent claims 8-9, 25-28 and 30-32 recite in part, "for the purpose of confirming an illumination characteristic". The Examiner states that Zheng teaches wherein the hollow chamber further comprises an optical sensor (CCD) configured to receive illumination from the at least one source of illumination for the purpose

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of confirming an illumination characteristic provided by the at least one source of illumination (col. 4, lines 55-65; col. 6, lines 10-22).

The Applicant re-asserts the arguments that were asserted by the Applicant in previous office action responses, and asserts that he cannot find a teaching either disclosing or suggesting the particularly recited claimed feature of a structure “configured to receive illumination from the at least one source of illumination for the purpose of confirming an illumination characteristic provided by the at least one source of illumination” in the references section of the relied upon reference to Zheng.

Claim 1 further recites in part “wherein the hollow chamber is constructed in a plurality of mating sections, a first section comprising the first surface defining the first aperture representing the viewing area of the imager of the encoded indicium, and a second section comprising the second surface defining the second aperture configured to support the imager in the position to obtain the image of the encoded indicium.”

The Examiner states that “parts 40, 80, etc. (see figs. 1-2)” describe such claim limitations and also cites (Zheng, col. 3, line 21 through col. 7, line 30; col. 2, lines 25-64). The Applicant asserts that it is not apparent how parts 40 and 80 meet such claim limitations and that Zheng fails to teach such claim limitations.

As a matter of law, because independent claims 1, 24, 29, 36, 41, 46, 48 distinguish over the cited art, claims 2-9, 25-28, 30-35, 37-40, 42-45, 47 and 49-51 which depend from the independent claims, also distinguish over the cited art. Accordingly, the Applicant respectfully requests that the Examiner allow claims 1-9, 24-28, 29-35, 36-40, 41-45, 46-47 and 48-51.

While the Applicant herein may have mentioned or emphasized a particular claim element of a claim for purposes of demonstrating an insufficiency of an examination on the part of an Examiner, the Applicant’s highlighting of a particular claim element for such

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purpose should not be taken to indicate that the Applicant has taken the position that a particular claim element constitutes the sole basis for patentability out of the context of the various combinations of elements of the claim or claims in which it is present.

If the Examiner believes that contact with Applicant's attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call Applicant's representative at the phone number listed below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to deposit Account No. 50-0289.

Respectfully submitted,
WALL MARJAMA & BILINSKI LLP

Date: December 5, 2006


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Charles E. Biss
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For: Apparatus and Method for Verifying Print Quality of an Encoded Indicium

ANNOTATED MARKED-UP DRAWING

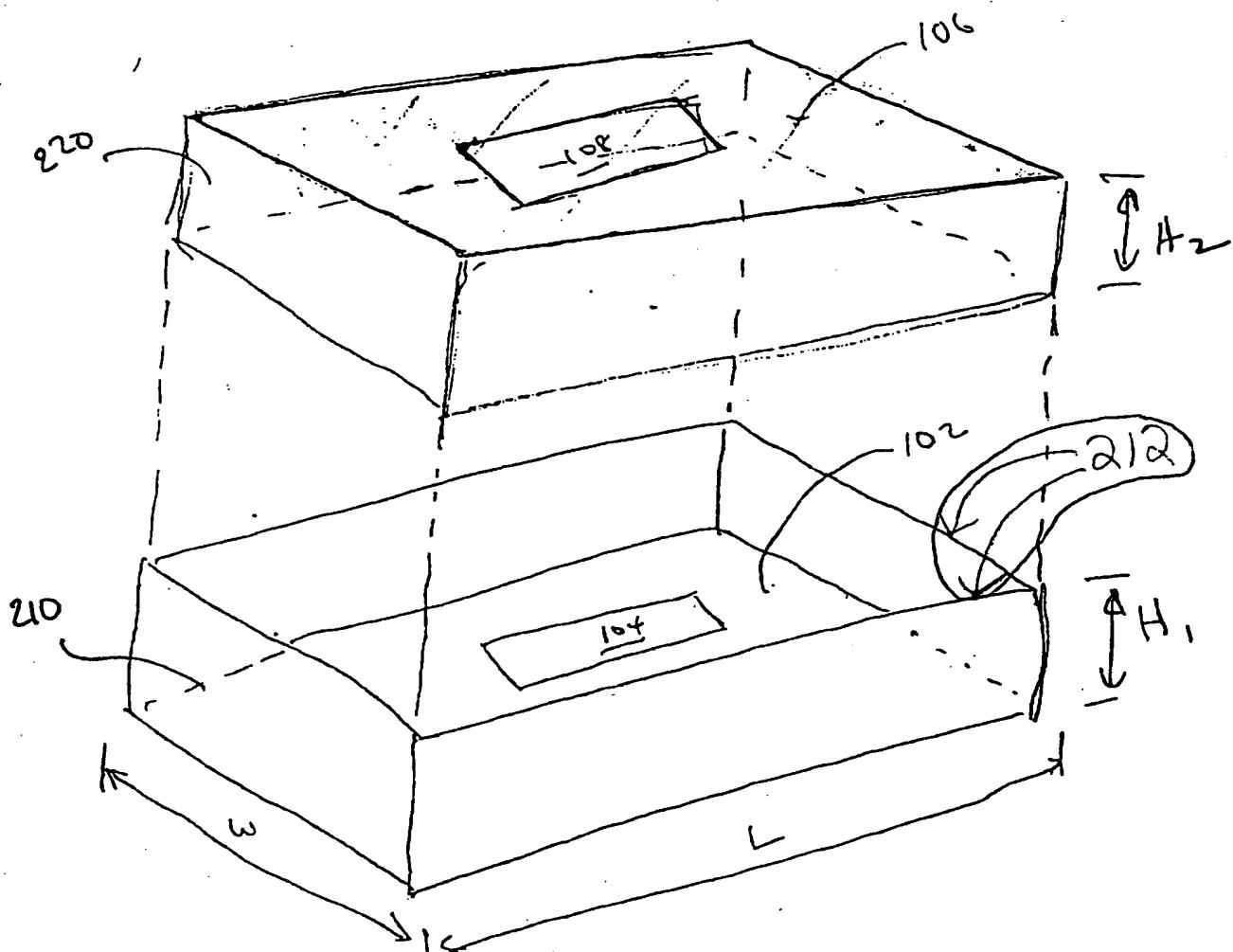


Fig 2